

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re:

SCOTT J. BALDWIN and  
TAMARA L. BALDWIN,

Debtors.

Chapter 13  
Case No. 06-11448

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APPEARANCES:

RICHARD CROAK, ESQ.  
*Attorney for Debtors*  
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Albany, NY 12203

ANDREA E. CELLI, ESQ.  
*Chapter 13 Standing Trustee*  
350 Northern Blvd.  
Albany, NY 12204

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

**MEMORANDUM-DECISION AND ORDER**

Under consideration by the court is confirmation of the chapter 13 plan (“Plan”) of Scott J. and Tamara L. Baldwin (“Debtors”). Andrea E. Celli, Chapter 13 Standing Trustee (“Trustee”), objects to confirmation on the basis that the Debtors have not provided for the submission of all disposable income to the Plan during the applicable commitment period pursuant to 11 U.S.C. § 1325(b)(1)(B).<sup>1</sup> The court has jurisdiction over this core matter pursuant to 28 U.S.C. §§ 157(a), (b)(1), (b)(2)(A) and (L), and 1334.

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<sup>1</sup> Unless otherwise noted, all statutory references herein are to the Bankruptcy Code, 11 U.S.C. § § 101 to 1532.

## FACTS

The relevant facts are not in dispute. To briefly summarize, on June 15, 2006, the Debtors filed a voluntary chapter 7 petition, together with related schedules and statements. (No. 1.) Accordingly, this case is governed by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), which became effective on October 17, 2005. On their Chapter 7 Statement of Current Monthly Income and Means Test Calculation form (“Form B22A”), the Debtors compute their current monthly income to be \$5,953.71 and annualized income to be \$71,444.52. The Form B22A also indicates that the Debtors have negative monthly disposable income of \$331.20. Pursuant to the information contained on the Form B22A, Debtors are “above median debtors.”<sup>2</sup>

The United States Trustee (“UST”) filed a Motion to Dismiss pursuant to § 707(b) (1), (2), and (3) on October 19, 2006 (“Dismissal Motion”). (No. 35.) In the Dismissal Motion, the UST calculates the Debtors’ actual current monthly income to be \$6,211.52, based upon the materials filed with the court and supplied to the UST by the Debtors. The UST’s analysis shows significant variations from the Debtors’ claimed amounts for expenses. The UST believes the Debtors have positive monthly disposable income of \$783.32, resulting in disposable income of \$46,999.20 for 60 months.

Debtors are instructed to insert on line 25 of Form B22A, “[t]he total average monthly expense that [the debtors] actually incur for all federal, state and local taxes.”<sup>3</sup> See Form B22A,

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<sup>2</sup> Federal Rule of Bankruptcy Procedure 1007(b)(4) requires that all chapter 7 debtors complete Parts II, III and IV of Form B22A to calculate a debtor’s current monthly income and to determine whether a debtor’s annualized current monthly income is above or below the median family income of similarly sized households for the applicable state.

<sup>3</sup> Line 25 of Form B22A mirrors the language of Line 30 of Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (“Form B22C”). Line 30 is at issue in the present case.

Instructions Line 25. On line 25 of Form B22A, the Debtors reported their income tax deduction in the amount of \$1,465.00.<sup>4</sup> The UST calculated the Debtors' actual monthly tax expense to be \$ 1,258.50 by reducing the Debtors' number (\$1,465.00) by one-twelfth of the Debtors' previous year's federal and state income tax refunds (\$206.50). The UST asserts this amount is a more accurate reflection of the Debtors' actual monthly tax expense, since it accounts for the amounts over-withheld from their wages. (Dismissal Mot. ¶ 18.) In the last four years, the Debtors have received state and federal income tax refunds.

The Debtors filed a Motion to Convert Case to Chapter 13 on October 24, 2006, which was subsequently granted on December 4, 2006. (Nos. 39 and 45.) On October 25, 2006, the Debtors filed the Plan providing for monthly payments of \$373.00 over 60 months, resulting in a plan base of \$22,380.00. (No. 41.) The Debtors scheduled unsecured debt of approximately \$65,056.39. The Plan provides for a 20% distribution to unsecured creditors. *Id.*

On October 30, 2006, the Debtors filed amended schedules I and J, and an amended Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income ("Form B22C"). (Nos. 43 and 44.) The amended schedule I shows gross monthly income of \$5,788.00 and net monthly income of \$4,354.42 after deductions. (No. 43.) The Debtors reported a decrease in monthly expenses by \$175.00 to \$4,051.98 on their amended schedule J. *Id.* The amended Form B22C reflects an increase in the Debtors' current monthly income from \$5,953.71 to \$6,218.50, or \$74,622.00 annualized.<sup>5</sup> (No. 44.) Additionally, the Debtors increased their income tax expense on line 30 of Form B22C ("Line 30") to \$1,731.01,

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<sup>4</sup> The Debtors mistakenly listed the income tax deduction on line 26 of the Form B22A, when it should properly have been placed on line 25.

<sup>5</sup> A Form B22A was filed in connection with the chapter 7 filing and, upon conversion to chapter 13, the Debtors filed an "Amended" Form B22C, although it is the only Form B22C filed by the Debtors.

resulting in monthly disposable income of \$203.25, with a distribution of \$12,195.00 to unsecured creditors.<sup>6</sup>

The Trustee filed her objection to the Plan on March 7, 2007. (No. 55.) The court heard oral argument on the Trustee's objection on June 28, 2007. As the parties were unable to agree on a methodology for calculating the income tax expense on Line 30, the parties agreed to a briefing schedule for submission of memoranda of law. The final memorandum of law was filed on September 5, 2007, at which time this matter was taken under advisement.

### **ARGUMENTS**

The Trustee's principle objection to the Plan is that the Debtors fail to provide for the submission of all their disposable income pursuant to 11 U.S.C. § 1325(b)(1)(B). More specifically, the Trustee objects to the Debtors use of a website to calculate "actual tax," for the purpose of Line 30, which overstates their tax expense. The Trustee states that the Debtors' methodology is premised on an "estimation of the tax withholdings they can expect to incur," and it does not accurately reflect the "actual tax" incurred by the Debtors at the time of filing. (Trustee's Mem. of Law 5.) The Trustee agrees with the methodology proffered by the UST in the Dismissal Motion for the calculation of "actual tax," which divides the amount of the prior year's income tax refunds by twelve and reduces the monthly deduction for taxes based on tax withholdings on Line 30 accordingly. The Trustee maintains that this method promulgates an "[e]ducated and sophisticated methodology that utilizes actual tax dollars withheld." (Trustee's Mem. of Law 6.) The Trustee agrees with the UST's calculation of the Debtors' monthly tax

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<sup>6</sup> In their brief, the Debtors assert their tax expense is \$1,501.12, as calculated by the website *www.paycheckcity.com*. However, on the amended Form B22C, the Debtors' tax expense on Line 30 is \$1,731.01. Form B22C was never amended to reflect the *paycheckcity.com* figure, therefore, based upon the record before the court, the Debtors' tax expense is \$1,731.01.

expense, namely \$1,258.50. Accordingly, the Trustee asserts the Debtors' monthly disposable income is \$635.63, resulting in a distribution of \$38,137.80 for unsecured creditors.

The Debtors agree with the Trustee that the "actual tax" amount must be deducted from Line 30 and not the amount withheld from wages. However, the Debtors insist that employing the website, [www.paycheckcity.com](http://www.paycheckcity.com),<sup>7</sup> is an adequate method to calculate the actual tax incurred. According to the Debtors, [paycheckcity.com](http://www.paycheckcity.com) collects information provided by the user, such as annual income, exemptions, withholdings and allowances, and filing status, and calculates a monthly estimate of net pay and applicable federal, state, social security and Medicare tax withholdings. Debtors argue that the amount the website calculates for tax withholdings is their actual tax expense, and as such, should be entered on Line 30.

### DISCUSSION

Both the Trustee and Debtors agree that the "actual tax" incurred by the Debtors is the proper deduction for "Other Necessary Expenses: Taxes" on Line 30, following the court's reasoning in *In re Balcerowski*, 353 B.R. 581 (Bankr. E.D. Wis. 2006). *See also, In re Lawson*, 361 B.R. 215 (Bankr. D. Utah 2007).

The issue before the court is what is the proper method for calculating "actual tax." The *Balcerowski* court held that the above median debtor must subtract from Line 30 a best estimate of the average monthly amount of all federal, state, and local taxes that will actually be incurred, rather than the amounts withheld. *Id.* at 589. The *Balcerowski* court, however, did not articulate

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<sup>7</sup> <http://www.payroll-taxes.com> is a website "powered by" PayCheckCity's calculators. Under its "Paycheck Calculator" tab, it provides an "important note about calculators" which states, "[t]he calculators on these pages are designed to provide general guidance and estimates. They should not be relied upon to calculate exact taxes, payroll or other financial data. This calculator is not intended to provide tax or legal advice...."

a particular methodology to calculate “actual tax,” and “leaves it to the parties to determine how best to make that estimate.” *Id.* at 588.

Courts in other jurisdictions have formulated various approaches for calculating actual tax. In *In re Raybon*, 364 B.R. 587 (Bankr. D. S.C. 2007), the court computed “actual tax” based upon withholdings, but required the debtor to submit her yearly tax refunds to the chapter 13 trustee during the term of her plan, unless otherwise ordered by the court. The tax refunds would be in addition to the debtor’s plan payments until the unsecured creditors are paid in full or the debtor’s plan is fully performed. *Id.*

The court in *In re Stimac*, 366 B.R. 889 (Bankr. E.D. Wis. 2007), calculated “actual tax” by deducting the amount of taxes the debtor actually paid at Line 30, as evidenced by the debtor’s most recently filed tax return, divided by twelve. A debtor may rebut this presumption by proving that the taxes paid in the most recent year would constitute a materially insufficient or inaccurate deduction due to a change in circumstances. *Id.* This method, however, does not consider any pre-tax withholdings, such as health benefits, flexible spending plans, etc.; thus, the court questions its accuracy.

Debtors submit the use of [www.paycheckcity.com](http://www.paycheckcity.com) as an acceptable method of calculating actual tax incurred. However, the website’s results are a projection and estimate of net pay on a monthly or bi-weekly basis. Consequently, there runs a substantial risk of human error in inputting information. The Debtors characterize the website’s results as an “accurate *prediction* of Debtors’ tax liability.” (Debtors’ Mem. of Law 4) (emphasis added). The court is unwilling to promote a prediction website as an official mechanism for calculating actual tax. The court finds the methodology for computing “actual tax” advanced by the Trustee, namely the methodology

put forth by the UST in the Dismissal Motion, to be a more accurate approach. Adopting this methodology to compute “actual tax,” for purposes of Line 30, debtors must subtract from their monthly withholdings one-twelfth of their prior year’s federal and state income tax refunds. It would then be left to a debtor to rebut this conclusion if circumstances have changed materially over the year.

### **CONCLUSION**

Based on the above, the court finds that the Debtors have overstated their tax expense by \$206.50 and, thus, failed to include all disposable income in their Plan. Accordingly, the Trustee’s objection is sustained, and confirmation is denied.

It is so ORDERED

Dated: March 10, 2008

/s/ Robert E. Littlefield, Jr.

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Honorable Robert E. Littlefield, Jr.  
U.S. Bankruptcy Judge